

REMARKS

Claims 1-12 remain under active prosecution in the present application.

In the subject Office Action dated April 1, 2005, Claims 1-4, 6-9 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Katz (US 5,553,120) in view of Szlam (US 5,511,112). Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Katz in view of Szlam and in further view of Hou et al. (US 5,325,421). Claims 10-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Katz in view of Szlam and in further view of Hammarström et al. (US 6,044,142). Applicants submit that each of these rejections was in error, and that the rejected claims are allowable over the art of record.

Applicants respectfully traverse the rejections because a *prima facie* case of obviousness has not been, and can not be, established. To establish a *prima facie* case of obviousness, as specified in MPEP § 2143, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. Applicants further note that all words in a claim must be considered in judging the patentability of that claim against the prior art, and an obviousness rejection permits no exception to this rule. (MPEP § 2143.03).

With respect to Claims 1-4, a *prima facie* case of obviousness has not been, and can not be, established because Katz and Szlam do not teach or suggest each limitation recited in Claims 1-4 (see MPEP § 2143.03). In particular, neither Katz nor Szlam, either alone or in combination, teach(es) the recited limitations of “forwarding the out-of-band call destination information to said IVR before the call arrives at a port of said IVR,” where the out-of-band call destination information comprises “Dialed Number Identification Service (DNIS) information associated with the call.” Applicants note that one of ordinary skill in the art would immediately recognize that the “out-of-band” aspect inherently means that the call destination information is sent on a dedicated channel that is separate from the channel(s) used to send the telephone call. (See, e.g.,

page 7, line 18 through page 8, line 3 of the present specification). Thus, according to Claim 1, the IVR can “know” the call destination information (including DNIS) before the phone “rings” at the IVR. For the reasons set forth below, the art of record simply does not contemplate a call processing system having such features.

Applicants appreciate the Examiner’s concession that Katz “fails to disclose passing out of band call destination information associated with the call.” (Office Action dated 04/01/2005 at page 3). However, applicants respectfully disagree with the Examiner that Szlam makes up for this shortcoming of Katz. To support the proposition that Szlam teaches the above-quoted limitations, the Examiner cites Figure 1 and column 5, lines 3-13 of Szlam. With respect to Figure 1, applicants note that the drawing simply shows a plurality of trunk lines being fed into a PBX/ACD/switch, and/or into trunk interface units. Among other deficiencies, the drawing does not teach the type of information (e.g., “call destination information,” as recited) being transmitted over the lines; nor does it teach the relative timing of information being forwarded to an IVR and the call arriving at a port of the IVR (e.g., “forwarding the out-of-band call destination information to said IVR *before* the call arrives at a port of said IVR,” as recited (emphasis added)).

The passage of the Szlam specification cited by the Examiner fails to make up for the deficiencies of Figure 1 of Szlam. Applicants note that the cited passage (Col. 5, ll. 3-13) discloses the following:

Trunk interface units 10 typically perform trunk seizure, dialing, call progress monitoring, message playing, message recording, voice recognition and analysis, voice conversion, voice storage, voice playback, dual tone multifrequency (DTMF) decoding, and decoding of ANI and DNIS call data provided by the telephone company central office. Alternatively, PBX/ACD/switch 13 may perform the functions related to outbound call placement and inbound call detection and initial handling, and the trunk interface units 10 may primarily perform voice and DTMF processing functions.

To the extent that this passage teaches the forwarding of call destination information, Applicants fail to see where or how the passage teaches forwarding such information before the call arrives at a port of an IVR. Accordingly, applicants respectfully submit that, among the other shortcomings of Szlam, Szlam fails to teach the limitation “forwarding the out-of-band call

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destination information to said IVR before the call arrives at a port of said IVR,” which is recited in present Claim 1. A *prima facie* case of obviousness therefore has not been established under MPEP § 2143.03 with respect to Claim 1.

In addition, even if Katz and/or Szlam taught all of the limitations recited in present claim 1, the Examiner has failed to establish a suggestion or motivation in the prior art to combine or modify the references to obtain the invention recited in Claim 1. Applicants note that the mere fact that references *can* be combined or modified is not sufficient to establish *prima facie* obviousness. (MPEP § 2143.01). In light of the foregoing, a *prima facie* case of obviousness has not been presented because the Examiner has failed to establish a suggestion or motivation in the prior art to combine or modify the references to obtain the invention recited in Claim 1. Accordingly, for at least these reasons, and pursuant to MPEP §§ 2143, 2143.01, and 2143.03, a *prima facie* case of obviousness has not been established with respect to Claim 1.

Applicants note that, because Claims 2-4 and 12 depend from Claim 1, they are patentable over the art of record for at least the same reasons that Claim 1 is patentable over the art of record. Applicants further note that the Claims 2-4 and 12 include additional limitations that are not taught or suggested in the art of record, thus forming independent basis for novelty and non-obviousness.

With respect to Claim 5, a *prima facie* case of obviousness has not been, and can not be, established because Katz, Szlam, and Hou do not teach or suggest each limitation recited in Claim 5 (see MPEP § 2143.03). In particular, neither Katz, Szlam, nor Hou, either alone or in combination, teach(es) the recited limitations of “a port sharing data interface processing program in operation with IVR’s, whereby each port of each IVR is monitored to determine its availability to receive a call, to request call destination information from said server via said network structure and play at least one of said scripts to a caller,” as recited in Claim 5.

First, Applicants note that none of the cited references teach a *single program* (i.e., a “port sharing data interface processing program”) that is operable to perform *all three functions* recited in the claim – (1) monitoring each port of each IVR to determine its availability to receive a call, (2) requesting call destination information from the server via the network

structure, and (3) playing at least one of the scripts to the caller. The Examiner cited various passages of Katz to support the rejection of this portion of Claim 5; and all of the passages are from various locations in Katz's specification, none of them suggesting that they were discussing a single, common program. Ultimately, Katz fails to teach or suggest a program operable to perform the three functions noted above. Neither Szlam nor Hou make up for this deficiency. Accordingly, a *prima facie* case of obviousness has not been established under MPEP § 2143.03 with respect to Claim 5.

Second, notwithstanding the number of programs for performing the recited functions, Katz fails to disclose all three of the recited functions. For instance, Katz fails to disclose a program whereby each port of each IVR is monitored to determine its availability to receive a call (i.e., a program having a function of monitoring each port of each IVR to determine its availability to receive a call). The passage of Katz cited by the Examiner as supposedly teaching this limitation (Col. 3, l. 26) simply says, "From the audio response units AR1-ARn, lines LS1-LSn pass through a switch coupler 22 for select communication with the individual interface format processors IP1-IPn." Applicants fail to see how this passage even remotely contemplates monitoring the availability of an IVR port to receive a call. At most, the passage may implicitly suggest determining the availability of an "interface format processor." Note that an "interface format processor" is not disclosed as being an IVR. The closest thing to an IVR that is disclosed by Katz is the "audio response unit," whose port availability is not disclosed as being monitored.

In addition, Katz fails to disclose a program to request call destination information from the server (i.e., a program having a function of requesting call destination information from a server). The passage of Katz cited by the Examiner as supposedly teaching this limitation (Col. 4, l. 33) at most suggests one or more ways in which call destination information may be used. It does not teach how such information is communicated within the system (e.g., from which component, to which component, in response to a request, "pushed," "pulled," etc.). It certainly does not teach a program to *request* call destination information *from a server*, as recited in Claim 5.

In light of the foregoing, there are at least two features of the port sharing data interface processing program recited in Claim 5 that are not taught or suggested by Katz. Applicants note

that Szlam and Hou do not make up for this deficiency of Katz. A *prima facie* case of obviousness therefore has not been established under MPEP § 2143.03 with respect to Claim 5. In addition, even if Katz, Szlam, and/or Hou taught all of the limitations recited in present claim 5, the Examiner has failed to establish a suggestion or motivation in the prior art to combine or modify the references to obtain the invention recited in Claim 5. Applicants note that the mere fact that references *can* be combined or modified is not sufficient to establish *prima facie* obviousness. (MPEP § 2143.01). In light of the foregoing, a *prima facie* case of obviousness has not been presented because the Examiner has failed to establish a suggestion or motivation in the prior art to combine or modify the references to obtain the invention recited in Claim 5. Accordingly, for at least these reasons, and pursuant to MPEP §§ 2143, 2143.01, and 2143.03, a *prima facie* case of obviousness has not been established with respect to Claim 5.

With respect to Claims 6-9, Applicants submit that a *prima facie* case of obviousness has not been established for at least the same reasons that a *prima facie* case of obviousness has not been established for Claim 1. Similar to Claim 1, each of Claims 6-9 recite the passing of call destination information comprising DNIS and/or Automatic Number Identification (ANI) to an IVR *before* the call arrives at a port of the IVR. As discussed above, these limitations are neither taught nor suggested by Katz or Szlam, either alone or in combination. In addition, even if the limitations were taught or suggested by Katz and/or Szlam, the Examiner has failed to establish a motivation to modify or combine the teachings of the references to obtain the invention recited in Claims 6-9, which is required by MPEP § 2143.01. Again, Applicants note that the mere fact that references *can* be combined or modified is not sufficient to establish *prima facie* obviousness. (MPEP § 2143.01). Accordingly, for at least these reasons, and pursuant to MPEP §§ 2143, 2143.01, and 2143.03, a *prima facie* case of obviousness has not been established with respect to Claims 6-9.

With respect to Claims 10-11, Applicants submit that a *prima facie* case of obviousness has not been established for reasons similar to those for which a *prima facie* case of obviousness has not been established for Claim 1. Claims 10 and 11 recite an IVR that is configured to access a program associated with call destination information before the call arrives at a port of the IVR. As discussed above, neither Katz nor Szlam, alone or in combination, teach an IVR

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doing anything related to call destination information before a call arrives at the port of an IVR. Hammarström et al. does not make up for this deficiency. In addition, even if the limitations were taught or suggested by Katz, Szlam, and/or Hammarström, the Examiner has failed to establish a motivation to modify or combine the teachings of the references to obtain the invention recited in Claims 10 and 11, which is required by MPEP § 2143.01. Again, Applicants note that the mere fact that references *can* be combined or modified is not sufficient to establish *prima facie* obviousness. (MPEP § 2143.01). Accordingly, for at least these reasons, and pursuant to MPEP §§ 2143, 2143.01, and 2143.03, a *prima facie* case of obviousness has not been established with respect to Claims 10 and 11.

To the extent that Applicants have not explicitly addressed certain aspects of the present rejections, please do not construe the same as an admission as to the merits of the rejections. Indeed, Applicants reserve all rights with respect to arguments not explicitly raised herein.

Applicants note that, because the claims have not been amended herein, the present response does not raise new issues or contain new matter. Accordingly, Applicants respectfully request that the present response be entered and considered on the merits.

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Conclusion

In light of the remarks made herein, it is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicants encourage the Examiner to contact their representative, David Franklin at (513) 651-6856 or dfranklin@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

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